

1 responsible for him leaving again?

2 THE WITNESS: Well, he is responsible
3 for his own actions.

4 THE COURT: Okay.

5 THE WITNESS: But, like you say,
6 sometimes you got to do what you got to do.

7 I don't excuse him, I just want him
8 tried the right way.

9 Less sentence -- if he have to do
10 something. I just don't want him to miss
11 out on my child's life again.

12 THE COURT: Well, I only have two
13 choices; either, life or life without parole
14 because of the law. I have no discretion in
15 there. My decision is only whether or not
16 he is going to get life, or life without
17 parole. And he has four prior felonies.

18 THE WITNESS: I didn't think he
19 deserves life. I don't think he deserves
20 life. You have people that actually kill
21 people --

22 THE COURT: Well, I don't make the law.

23 Ma'am, listen to me. Listen to me. I
24 want you to hear me.

25 The legislature, down in Montgomery,

A

1 the people we elect to go down there to
2 represent the citizens; they make the laws.
3 Okay? I don't make the laws. That's not my
4 job.

5 But my choice is only whether or not
6 he's going to get life today or life without
7 parole. Those are the only two choices I
8 have.

9 So.

10 THE WITNESS: Your Honor, with those
11 two choices. I ask you to give us a chance
12 because if he has a life sentence, I know
13 that there is a possibility that he will
14 come up for a parole.

15 If you were to give him a life without
16 parole sentence, he will never be able to be
17 in his children's life, there will be three
18 kids -- another three black children,
19 growing up in this world without their
20 father. With single parents struggling,
21 trying to take care of them.

22 So I ask you to please give us a
23 chance, give these kids a chance. Not
24 Durrell, not the children's mother, but the
25 kids. Give them a chance to have a father

1 in their life who knows their real father.

2 That's what I ask you today, Your
3 Honor, to please give them a chance. I'm
4 begging for their lives right now. Not
5 ours, not his, but theirs.

6 THE WITNESS: I have nothing to gain by
7 this at all. I just want my child to be
8 able to grow up.

9 THE COURT: All right. Anything else
10 for the defense?

11 Does the Defendant have anything to
12 say?

13 MR. BENSON: Here's a copy of a letter
14 from Pastor Williams, who just spoke.

15 I just also want to point out that Mr.
16 Bester was in treatment, prior to his
17 incarceration. And I don't think it can be
18 said any better than what Ms. Coleman just
19 said.

20 You know, punishing this Defendant with
21 a life sentence without the possibility of
22 parole also punishes three children. And in
23 this day in time, you know, there's a strong
24 -- in society, there's a strong lack of a
25 father figure and sentencing --

1 THE COURT: Well, do you think it's the
2 first time that he was trafficking in
3 cocaine when he got caught?

4 MR. BENSON: Yes, I do, Your Honor.

5 THE COURT: Well, he was named in the
6 search warrant. So that tells me that he
7 had been dealing in drugs out there for
8 awhile.

9 MR. BENSON: He has not be charged with
10 any other crimes, Your Honor.

11 THE COURT: I'm just saying, I got
12 common sense. I've been doing this for
13 almost, longer than I want to admit. And by
14 him being named in the search warrant tells
15 me that he had been dealing drugs out there.

16 MR. BENSON: There was no evidence
17 presented of Mr. Bester dealing drugs. It
18 was just the finding of the drugs and the
19 possession.

20 THE COURT: Well, I know what it takes
21 to get an affidavit for a search warrant. I
22 sign them and prepared them for a long time.

23 When I read the facts of this case, I
24 said clearly, what came to my mind, that
25 this is a drug trafficking. And then, what

1 got my attention was that he was even using
2 his mother's house. His mother's house. To
3 store drugs in. And that didn't set well
4 with me.

5 And then, when I looked at his record,
6 and saw all the priors, including dangerous
7 felonies. Shooting into people's houses.
8 That's how people get killed.

9 MR. BENSON: Your Honor, again, he's
10 paid for those crimes. I understand under
11 the Habitual they can be considered in
12 sentencing.

13 But, I would like, Judge, to consider
14 leniency in this. And make it just a life
15 sentence. And give Mr. Bester an
16 opportunity to get into the penitentiary,
17 and do the things necessary to prove his
18 worthiness to return to the mainstream
19 society.

20 THE COURT: On the possession of drug
21 paraphernalia case, the Defendant is
22 sentenced to 12 months in the county jail.

23 \$100 fine.

24 \$50 to the Victim's Compensation.

25 Fines and cost at \$25 per month

1 beginning 30 days after release and each
2 month thereafter until paid in full, the
3 clerk is authorized to accept partial
4 payments. This sentence is to run
5 concurrently with CC08-3771.

6 MR. ANDERTON: Your Honor, if I may
7 make one point?

8 THE COURT: Yes.

9 MR. ANDERTON: On the failure to affix
10 tax stamps, there's a mandatory fine. And I
11 thought I had figured up what the fine
12 should be, based on the calculations that
13 are in the code. And I apologize to the
14 Court, I don't have that number. But it
15 would take me just a matter of minutes to
16 figure it up.

17 So when we get to the tax stamp case,
18 if the fine could just be held, I'll have it
19 for the Court in just a few minutes.

20 THE COURT: All right.

21 MR. ANDERTON: But I do apologize.

22 THE COURT: Well, is it outside the
23 range of a Class C felony?

24 MR. ANDERTON: It is --

25 THE COURT: Up to five thousand

1 dollars?

2 MR. ANDERTON: It is a mandatory fine
3 for -- it is the amount that he should have
4 paid for tax stamps doubled, and there is an
5 amount per the amount of drugs, and so yes I
6 would think that it would be over the five
7 thousand dollar amount, yes.

8 But again, it is based on the failure
9 to affix tax stamp statute. Which has its
10 own fines.

11 THE COURT: Regarding count two, the
12 failure to affix a tax stamp, the Defendant
13 is hereby sentenced to ten years in the
14 State penitentiary.

15 The fine is reserved.

16 \$50 to Victim's Compensation.

17 Fines and cost to be paid at the rate
18 of \$50 per month beginning 60 days after
19 release and each month thereafter, until
20 paid in full.

21 Mr. D.A.?

22 MR. ANDERTON: Yes, sir.

23 THE COURT: I'm having a hard time
24 deciding to send this man to prison for life
25 without parole, when I know that other

1 people have indeed killed people, and they
2 didn't get life without parole.

3 THE WITNESS: Thank you.

4 THE COURT: I didn't ask for any
5 comment.

6 You have any thoughts on that matter?

7 MR. ANDERTON: Judge, only what I had
8 presented to the Court. And, of course, the
9 Court knows that the cocaine that's on the
10 streets, is one of the main motivators
11 behind people robbing and killing people.

12 Mr. Bester has certainly demonstrated
13 his violent tendency, although some time
14 ago. And you know with a gun present, in
15 this particular case, with his use of guns
16 in the past. I just -- I would submit to
17 the Court that he is in fact a violent
18 offender. And he is quite honestly, you
19 know, he's a violent drug dealer. And the
20 violent drug dealers are the ones that are
21 causing so many problems on the street.

22 MR. BENSON: May I, Judge?

23 THE COURT: You may respond, if you
24 would like.

25 MR. BENSON: I would.

1 Your Honor, the gun was not found on
2 Mr. Bester. There was a no charge on the
3 gun. Again, the violent crime that
4 Mr. Bester was convicted of occurred over
5 nine years ago, when he was still very
6 young. People change.

7 And Mr. Bester has --

8 THE COURT: I mean, he shouldn't have
9 even been around another gun. With four
10 prior felonies.

11 MR. BENSON: At the time of his arrest,
12 he was 15 miles from the gun.

13 Was the testimony -- the police
14 followed him from his mother's apartment --

15 THE COURT: It says, under the seat
16 where the Defendant has been sitting.
17 Detective Eaton found a Beretta .22 hand
18 gun --

19 MR. BENSON: You're right, Judge, I
20 apologize.

21 He was in another individual's vehicle.
22 There was no evidence presented -- he was a
23 passenger. There was no evidence presented
24 that the gun belonged to Mr. Bester. Or
25 that he even had knowledge that there was a

1 gun under the seat.

2 THE COURT: I think Mr. Bester was a
3 violent individual.

4 And I think his activity out there in
5 the community is the type of activity that's
6 destroying the community with drugs.

7 I hereby sentence the Defendant to life
8 without parole.

9 \$500 fine.

10 \$50 to Victim's Compensation.

11 \$100 to Forensic Service.

12 Thousand to Drug Demand.

13 Fines and cost at \$50 per month.

14 Fines and cost are remitted. Due to
15 the sentence.

16 He's to be given credit for anytime
17 he's spent in jail.

18 This sentence is to run concurrently
19 with the sentence in CC08-3772.

20 You do have the right to appeal, by
21 filing written notice within 42 days with
22 the Circuit Clerk's Office.

23 Anything else?

24 MR. BENSON: Judge, at this time, we
25 would request that an appeal bond be set.

1 THE COURT: Appeal bond is denied due
2 to the length of the sentence.

3 MR. ANDERTON: Judge, on the tax stamp
4 case it being a Class C felony, I believe
5 the minimum on that would be a 15 year
6 sentence --

7 THE COURT: Oh, yeah with the priors.
8 On the tax stamp, count two, the sentence is
9 15 years.

10 All right.

11 Thank you all.

12 (Whereupon, at 9:28 a.m. on May
13 26th, 2009 court was adjourned.)

14

15 ***** END OF PROCEEDINGS *****

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CERTIFICATE OF COMPLETION OF
REPORTER'S TRANSCRIPT

IN RE:

DURRELL BESTER V. STATE OF ALABAMA

CC2008-3771 & CC2008-3772

I, Alicia Martin, Official Reporter for the Tenth Judicial Circuit of Alabama and Notary Public, State of Alabama at Large, do hereby certify there came before me the aforementioned proceedings, including witnesses who were duly sworn to testify to the truth concerning the matters in this cause, said evidence being taken down stenographically by me and transcribed by me or under my supervision and control.

All the pages of the transcript are numbered serially at the right-hand corner of each page, prefaced by the reporter's index, followed by the transcript, and ending with the numbers appearing on this certificate.

I further certify that I am neither attorney or counsel for, nor related to, or

1 employed by any of the parties to the action in
2 which this proceeding is taken; and furthermore,
3 that I am not a relative or employee of any
4 attorney or counsel employed by the parties hereto
5 or financially interested in the action.

6 IN WITNESS THEREOF, I have set my hand and
7 affixed my Notarial seal this the 20th day of
8 November, 2009.

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17 Alicia Martin
18

19 Alicia Martin, Official Court Reporter

20 ACCR#218
21
22
23
24
25

CERTIFICATE OF COMPLETION
REPORTER'S TRANSCRIPT

TO: The Clerk of the Court of Criminal Appeals
P. O. Box 301555
Montgomery, Alabama 36130-1555

Fax: (334) 242-4689

Criminal Appeals Case Number

CR08 - 11a36

Durrell Baster

Appellant's Name

v.

State of Alabama

Appellee

On appeal from the:



Circuit Court of



District Court of



Juvenile Court of

Jefferson County

Trial Court Case Number

CC2008-3771
CC2008-3770

Notice of Appeal Date

7/8/09

Alicia Martin

, certify that I have this date completed and filed with the clerk of the trial court an original and three copies of a true and correct transcript of all proceedings in the above referenced case that were reported by me and were specifically designated by the appellant for inclusion on the Reporter's Transcript Order. The transcript, which is numbered serially in the upper right-hand corner of each page, begins with a copy of the Reporter's Transcript Order and an index of both the exhibits and the testimony of the witnesses. The original transcript concludes with the original of this notice and the copies of the transcript conclude with copies of this notice. The page number appearing in the upper right-hand corner of this certificate is the last page of my portion of the transcript in this case.

Done this the

24th

day of

November

2009

Alicia Martin

Court Reporter

FILING AND SERVICE OF THIS FORM: Pursuant to Rule 11(b), A.R.App.P., the court reporter should file a copy of this certificate with the Clerk of the Court of Criminal Appeals and should serve copies of the certificate on counsel or the appellant or the appellant if he or she is not represented by appellate counsel, the attorney general and the district attorney, unless the appeal is from a municipal appeal, in which event a copy of the form should be served on the municipal prosecutor rather than the attorney general and district attorney.

State of Alabama Unified Judicial System From ARAP - 14 Rev. 11/91	CERTIFICATE OF COMPLETION AND TRANSMITTAL OF RECORD ON APPEAL BY TRIAL CLERK	Appellate Case Number CR08 1636
TO: THE CLERK OF THE COURT OF CRIMINAL APPEALS OF ALABAMA		DATE OF NOTICE OF APPEAL: 07/08/2009
APPELLANT		
v. STATE OF ALABAMA		
<p>I certify that I have this date completed and transmitted herewith to the appellate court the record on appeal by assembling in (a single volume of _____ pages) (<u>2</u> volumes of 200 pages each and one volume of <u>14</u> pages) the clerk's record and the reporter's transcript and that one copy each of the record on appeal has been served on the defendant and the Attorney General of the State of Alabama for the preparation of brief.</p> <p>I certify that a copy of this certificate has this date been served on counsel for each party to the appeal.</p> <p>DATED this <u>30TH</u> day of <u>NOVEMBER</u>, <u>2009</u>.</p> <p style="text-align: right;">s/ANNE-MARIE ADAMS</p> <p style="text-align: center;">Circuit Clerk</p>		

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